

1 should follow field boundaries, go north/south,
2 east/west and not diagonal across cropland.

3 **Q. Okay.**

4 A. So in this particular instance that I'm
5 thinking of, we never heard from that landowner
6 directly. And we seldom ever hear from every
7 landowner on a project. But the general consensus
8 was we should try line up our field boundaries and
9 try to avoid diagonally. And we made some of
10 those adjustments on our own after hearing the
11 general public comment.

12 **Q. Okay. This question is a little bit**
13 **different than the way I asked it before.**

14 **Did DEQ meet with each landowner to**
15 **discuss the impact on their property and possible**
16 **line placement?**

17 A. We did not meet with each individual
18 landowner.

19 **Q. Okay. Did DEQ discuss the options with**
20 **MATL?**

21 A. We gave MATL an equal opportunity along
22 with the landowners to comment on the alternatives
23 in the draft EIS.

24 **Q. So at that time MATL's status was the**
25 **same as the public?**

1 for each of the alternatives. For example, maybe
2 we had a local routing option that crossed three
3 miles of cropland in one area and only two in
4 another area. There was some state land on one of
5 the options but not the other. We tallied those
6 things up, presented the information. If there
7 was any other anecdotal information about our
8 knowledge of individual landowner wishes that was
9 portrayed to director at that time. And he took
10 that information and weighed and balanced it and
11 indicated what -- which option he was
12 preferring -- or selecting and which alternative
13 he was selecting.

14 **Q. Did landowners receive any additional**
15 **notice or public involvement or accommodations**
16 **than the general public?**

17 A. There are several ways in which we
18 contacted the public and individual landowners.
19 Any time anybody offered -- or signed in at the
20 public scoping meetings, offered comment in
21 writing to us after scoping meetings but during
22 the scoping period, generally they were added to
23 the mailing list unless they indicated they didn't
24 wanted to be included. As I've indicated earlier,
25 we prepared a mailing list, added to the mailing

1 A. To a certain degree, yeah. Sometimes in
2 some of the local routing options, we went out
3 with MATL and looked at some things. In other
4 instances, we developed the alternatives on our
5 own and gave MATL the same chance to comment as
6 everybody else did. We had been accused of being
7 too cozy with MATL by certain individuals. So we
8 try to give everybody an equal opportunity to
9 participate.

10 **Q. I think you kind of already told me, but**
11 **maybe you can make it a little bit crisper, DEQ's**
12 **process including the review of various routes.**
13 **Maybe let's go to the selection of the various**
14 **routes.**

15 **So you have all this competing**
16 **information, you have to decide one. How did you**
17 **make that final decision?**

18 A. I didn't make that final decision. Our
19 director made that final decision.

20 **Q. Director Oppen?**

21 A. Director Oppen is the decision maker for
22 the certificates of compliance.

23 **Q. Okay.**

24 A. What we did was assemble some
25 documentation of what the measures of impact were

1 list by using properties crossed. And then we
2 made the EIS generally available to the public.
3 And even if they didn't have property crossed, if
4 they had participated in meetings or later
5 requested to be on the mailing list, say some of
6 the environmental groups had an interest in
7 protecting wildlife or some were concerned about
8 cumulative impacts from the wind farms, they also
9 made it to the mailing list.

10 In some areas where we had local routing
11 options under consideration we went and met with
12 small groups of landowners directly on the ground
13 so we could look at maps and point to the general
14 area where the routes would be located. So we
15 contacted people in a variety of different
16 methods.

17 **Q. Do you recall how many times you met on**
18 **the grounds with the small groups? Was it ten or**
19 **less or --**

20 A. I would have to refresh -- I would to
21 pull out the maps and refresh my memory.

22 **Q. Okay. Did you receive numerous calls**
23 **from the governor's office during the MFSA**
24 **permitting process on this project?**

25 A. I personally did not speak to the

1 governor about this project until the day he was
2 signing the certificate -- or that Richard was
3 signing the certificate over in the capitol
4 building. My role is much lower in the higher
5 echelon than you would imply by your question.

6 Over the course of the project, we did
7 have a few calls from Evan Barrett, the governor's
8 economic development staff person over there in
9 the governor's office. I believe early on in the
10 process Tom Kaiserski was also stationed in the
11 governor's office, he's now with the Department of
12 Commerce. Now we did have numerous calls from
13 Mr. Kaiserski over the course of the project.

14 **Q. Is this typical with these types of
15 project to receive that many calls?**

16 A. From my involvement with the project, or
17 projects over the years, it was unprecedented to
18 have somebody like Mr. Kaiserski become involved
19 in our proceeding.

20 **Q. Did DEQ, somebody at DEQ also receive
21 calls from Senator Tester, to your knowledge?**

22 A. I've had calls from the representatives,
23 Senator Tester, Congressman Rehberg and our other
24 senator as well. Their staff members would
25 occasionally check in. It was a controversial

1 project. They had heard from their constituents
2 that there were concerns.

3 **Q. Would you go so far as to say it was even
4 kind of political pressure?**

5 **MR. ALKE:** Objection,
6 mischaracterization.

7 A. From our congressional staff, it was not
8 pressure, it was more inquiry as to what is going
9 on.

10 **Q. What about from the governor's office?**

11 A. From the governor's office, they were
12 interested in seeing the project go forward so the
13 wind farms could be built and there could be some
14 economic development.

15 **Q. Did you get calls from anybody else
16 besides the people we just talked about?**

17 A. Numerous landowner calls. And we had
18 calls from various interest groups pro and con. I
19 think that we even had some communication with the
20 National Park Service concerned with views from
21 Glacier Park at potential wind farms in the
22 vicinity of Cut Bank.

23 **Q. Would MATL be able to upgrade the line,
24 say, to 600 or 500 megawatts each direction
25 without further DEQ review?**

1 **MR. ALKE:** Objection, legal conclusion.

2 **THE WITNESS:** Ed, may I look at your
3 statute book?

4 **MR. HAYES:** Sure, it's right here.

5 A. Okay. Under the Major Facility Siting
6 Act, at this time, since the approval by DEQ,
7 there have been several changes in the law. And
8 one of them is in the section of the law that
9 deals with the definition of a facility that we
10 cover. And that's in 75-20-104. And the
11 definition of a facility is in "8." And it says
12 there under 8(a)(iv), that "A facility does not
13 include an upgrade to an existing transmission
14 line of a design capacity of 50 kilovolts or more
15 to increase that line's capacity, including
16 outside the existing easement or right-of-way
17 except for a newly acquired easement or
18 right-of-way necessary to comply with the
19 electromagnetic field standards, a newly acquired
20 easement or right-of-way outside of the existing
21 easement or right-of-way as described in
22 subsection 8(a)(iv), may not exceed a total of ten
23 miles in length or be more than 10 percent of the
24 existing transmission right-of-way, whichever is
25 greater. And the purpose of the easement must be

1 to avoid sensitive areas or inhabited areas or
2 conform to state or federal safety reliability and
3 operational standards designed to safeguard the
4 transmission network and protect electrical
5 workers and the public."

6 That implies that any line greater than
7 50 kV in size may be upgraded without undergoing a
8 review under MFSA if they don't go in excess of 10
9 percent of -- in a reroute.

10 **Q. (By Mr. Lund) 10 percent of the current
11 megawatts or --**

12 A. Ten miles or length or 10 percent of the
13 existing transmission line, whichever is greater.
14 So, yes, they could upgrade from --

15 **Q. Yes, because they wouldn't need more
16 right-of-way?**

17 A. And I think of it in terms of voltage.

18 **Q. Okay.**

19 A. They could take a little wood pole, 50 kV
20 line, somebody could, and upgrade it to a 500 kV
21 line or a 765 kV line. As long as they stayed
22 within the existing right-of-way, it would not
23 undergo a review of the Major Facility Siting Act.

24 **Q. Also they would possibly even have to
25 hang new poles but as long as they stayed within**

1 it.

2 **MR. ALKE:** Objection, legal conclusion.

3 A. The law reads as it reads.

4 **Q. (By Mr. Lund) It does.**

5 A. And whoever is listening to this or
6 reading this transcript can make their own
7 determination.

8 **Q. I'm not going to make you -- it's not
9 necessary for this case. I was just thinking out
10 loud as you were talking.**

11 A. Mr. McRae raised a similar question a
12 week or two ago.

13 **Q. In fact, No. 22 says Jerry's questions.**

14 A. Okay. That was one of Jerry's questions.
15 So you probably have our written response to
16 Jerry.

17 **Q. Should my clients be concerned about
18 their health with how close the line is to their
19 home?**

20 A. I don't know who your clients are.

21 **Q. Jerry McRae, their house, how close it
22 is. If you know.**

23 A. Jerry's house, as I recall, is quite
24 distant from the line. And so is Melissa's house.
25 And that's why we have some of the routing in

1 that particular area was to get farther away from
2 their house.

3 **Q. Based on your recollection, is the entire
4 right-of-way and all the poles going on Ron
5 Laubach's property? L-A-U-B-A-C-H. Is that
6 right?**

7 A. Pretty close.

8 **Q. Pretty close.**

9 A. The entire right of way -- no, Ron only
10 owns a very small piece of land and MATL stands
11 for miles on either size.

12 **Q. But what crosses him? The new amendment,
13 the amended certificate?**

14 A. If I may reach behind you, I think my
15 certificate and amendments are over there.

16 **Q. Do you want me to grab it for you?**

17 A. Yeah.

18 And Jerry raised that question a week or
19 two ago and we were somewhat puzzled by the
20 question because we thought language in the
21 certificate was perfectly obvious -- or in the
22 amendment. And I can't remember which amendment
23 that was. Was it "wetlands"?

24 **Q. No, he had his own separate one.**

25 A. Okay.

1 **Q. But it doesn't say his name on it, it's
2 some other name.**

3 A. It was Diamond Valley.

4 **Q. I think that might be it.**

5 A. Diamond Valley South. It's got a lot of
6 the wetlands EA but --

7 **THE WITNESS:** Craig, I might have you
8 run out and pull the Ron Laubach EA because --

9 **MR. JONES:** Do we have it?

10 A. I don't have it right at my fingertips.
11 It might be in here.

12 **MR. ALKE:** Shall we take a little break?

13 **MS. GRIFFITH:** Yeah, we can do that.

14 **MR. ALKE:** Sounds good.

15 (Whereupon, the deposition was in recess
16 at 3:00 p.m., and subsequently reconvened at 3:15
17 p.m., and the following proceedings were had and
18 entered of record:)

19 A. With regard to Jerry McRae, he had a
20 question about where the line would be located
21 relative to his property and Ron Laubach's
22 property. And my notes show I gave him a call and
23 left him a message on the 24th of February.

24 Ed was to contact Harley Harris, which is
25 one of MATL's employees just to make sure. It

1 seemed obvious to us. And Jerry, in his message
2 to me, or his phone call, I forget which it was,
3 my recollections was WAPA was -- he was saying
4 something about WAPA. Ed contacted him about an
5 easement on his place. And the language in the
6 amendment -- the language in our decision on the
7 amendment that affected Diamond Valley South or
8 the Laubach property in particular, on the one,
9 two -- third page, the second bullet says, "For
10 the Diamond Valley South amendment, the following
11 language from the environmental specifications,
12 Appendix A, Land Use, would not apply. Whenever
13 reasonably possible, structures should be located
14 along field boundaries," quote, unquote.

15 "In addition, the west side of the
16 northern portion and the northern portion of the
17 Diamond Valley South amendment would be located
18 entirely on the Ronald and Debbie Laubach -- on
19 Ronald and Debbie Laubach's property, in the east
20 half of Section 6 and 7 in Township 24 North,
21 Range 2 East and outside the easement held by the
22 United States Air Force restricting aboveground
23 structures near its missile silo, unless allowed
24 by the U.S. Air Force."

25 And, Craig, there was a figure.

1 MS. LUND: That's what I need.
 2 A. Depicted that. So we though Jerry was
 3 talking about his place and Jerry's place is here.
 4 Q. (By Mr. Lund) Uh-huh.
 5 A. And there's a little maybe mapping shift
 6 of ownerships here. But the language here should
 7 make it perfectly clear that as it we come up here
 8 and here, it's all on Ron's place.
 9 Q. Do you know whose property this is right
 10 here? I'm pointing where it says 30-2?
 11 A. Oh. That says Dahlmans.
 12 Q. Okay.
 13 A. So what we approved is in the corridors
 14 in the blue dashed area. And it connects to the
 15 yellow dashes. I don't know if you want to make
 16 this an exhibit or not.
 17 Q. Yeah, we can make it Exhibit 203. Is
 18 that right, Yvonne?
 19 EXHIBITS:
 20 (Deposition Exhibit No. 203 marked for
 21 identification.)
 22 A. So most of the poles were taken off the
 23 Dahlmans' place and put on Ron's place at his
 24 request.
 25 Q. (By Mr. Lund) Do you remember any of the

1 public comment from Dahlmans about this project?
 2 A. Not the recent. I'd have to go through
 3 and refresh my memory.
 4 Early on I recall that they were
 5 concerned that it was on their place. But this
 6 took it off of most of their place.
 7 Q. Except for the possibility of this pole
 8 at 30-2?
 9 A. Okay. So here's that language in the
 10 certificate if you want to make -- or the
 11 amendment.
 12 Q. Okay. I'll just keep that one.
 13 Now I'm going to ask you some -- a lot of
 14 different questions that have to do with some of
 15 the things that MATL said you would be testifying
 16 about. The first one is --
 17 A. Thanks for the tip, guys.
 18 Q. Is MATL a public utility?
 19 A. My understanding is that they're not, but
 20 I may be mistaken because I'm not a public utility
 21 expert.
 22 Q. I think it says it in your first
 23 paragraph of your certificate?
 24 A. Okay.
 25 Q. Will MATL receive economic benefit from

1 the line?
 2 A. Assuming they make money, I assume they
 3 will.
 4 Q. Did DEQ ever consider whether a member of
 5 the public could use the transmission line?
 6 A. I'm not sure we had that question
 7 specifically in comments in responses. But
 8 outside of that, I think there is a FERC process
 9 about open seasons and setting tariffs, that
 10 anybody with a generation project or receiving
 11 power would have to go through the FERC procedures
 12 rather than the DEQ procedures.
 13 Q. And would somebody who went through the
 14 FERC procedure, would they need to be able to pay
 15 for a substation to get on the line?
 16 A. I don't know what the financial
 17 arrangements would be between the owner of the
 18 line, transmission line and the developer.
 19 Q. Okay. Did DEQ determine whether MATL
 20 could refuse to serve a member of the public with
 21 a transmission line?
 22 MR. ALKE: Objection, foundation.
 23 A. Could you restate the question?
 24 Q. (By Mr. Lund) In your determination of
 25 public use, or the criteria that we talked about

1 in the certificate, did DEQ determine whether MATL
 2 could refuse to serve a member of the public with
 3 the transmission line?
 4 MR. ALKE: Objection.
 5 A. Let me read the public interest,
 6 convenience and necessity finding and maybe it's
 7 in there. I don't recall off the top of my head.
 8 I don't see that question directly
 9 addressed in the public interest, convenience and
 10 necessity finding, No. 11 on page 11 of the cert
 11 and subsequent pages of the certificate.
 12 Q. So would the answer be no?
 13 MR. ALKE: Objection,
 14 mischaracterization.
 15 A. We did not address that specific
 16 question, one way or another.
 17 Q. (By Mr. Lund) Okay. Do you know whether
 18 or not MATL is regulated by the PSC?
 19 A. I think you would have to ask the PSC. I
 20 don't work on PSC issues.
 21 Q. Was the fact whether or not MATL is
 22 regulated important to DEQ when they made the
 23 determinations?
 24 MR. ALKE: Objection, vague.
 25 A. There was some general consideration how

1 the MATL project might affect rates for Montana
2 rate payers. Beyond that, I don't think we
3 addressed your question in the EIS.

4 **Q. Did DEQ --**

5 A. Under the Siting Act, PSC has an
6 opportunity to provide a recommendation. As I
7 recall we heard nothing from the PSC with regard
8 to a recommendation.

9 **Q. Okay. Did DEQ determine whether the
10 public interest required the taking of the
11 landowners' private property?**

12 **MR. ALKE:** Objection, vague.

13 A. In the public interest, convenience and
14 necessity finding beginning on page 11, after
15 giving it a quick reread, I do not see that
16 particular question addressed one way or another.

17 **Q. Okay. Did DEQ --**

18 A. In the EIS, however, use of eminent
19 domain authority was a concern we received in
20 response to public comment. And we did some
21 discussion of the eminent domain process and
22 recognized it might be necessary as kind of a last
23 resort in the project.

24 **Q. Was the MFSA process the eminent domain
25 process?**

1 A. They are distantly related, only in that
2 under MFSA the definition of "commence to
3 construct," a list several things that constitute
4 the start of construction, one of those items is
5 the commencement of eminent domain proceedings.
6 And you cannot commence eminent domain proceedings
7 without first receiving a certificate of
8 compliance.

9 **Q. Did DEQ determine whether MATL's taking
10 of the private property was necessary to the
11 public use?**

12 **MR. ALKE:** Objection, vague. Legal
13 conclusion.

14 A. We didn't address specific parcels, if
15 that's what your question is.

16 **Q. (By Mr. Lund) Did DEQ determine whether
17 the project would accommodate any people living in
18 the vicinity of the proposed project? By
19 accommodate, I mean provide electrical service to
20 them.**

21 A. There may have been a comment in that
22 regard. You'd have to refer to the comments and
23 response section of the final EIS. I don't recall
24 off the top of my head.

25 **Q. Okay.**

1 A. I know we've heard from -- over the
2 course of the project, we heard from Jerry McRae
3 who indicated that he might have a wind farm
4 development on his property. Or he was somehow
5 involved in a potential wind farm development.

6 We heard from another landowner up there
7 by Belgian Hill who wanted the project rerouted so
8 that he could take advantage of a potential wind
9 farm, the power line might otherwise be in the way
10 of a wind farm -- or one wind turbine on his
11 property. There were other people that indicated
12 that maybe they -- or there was, what, two or
13 three other wind farms around the Conrad, north of
14 Conrad area that might want to take advantage of
15 this project.

16 At the time we made the certification,
17 they were not included in the response to the FERC
18 open season. So there was talk but --

19 **Q. So again, it would be mostly with
20 potential wind farms would be the people who are
21 maybe going to be accommodated? Is that a way to
22 characterize what you just said?**

23 A. Yeah. And I would go one step beyond
24 that.

25 **Q. Okay.**

1 A. If I want to generate a small amount of
2 electricity, the cost of the transformer to bring
3 the voltage produced by my generator up to 230
4 kilovolts in the switching gear --

5 **Q. Okay.**

6 A. -- for just a small wind turbine in the
7 backyard, would probably be cost prohibitive. You
8 have to scale up and get a fairly sizable wind
9 farm before you can afford to make the
10 interconnections to a line of this size.

11 **Q. Okay.**

12 A. You might downscale it through reverse
13 metering and be able to connect to the power
14 supply to your house. But we're talking some
15 orders of magnitude difference in generation.

16 **Q. Okay. Did DEQ ever determine what the
17 actual damage would be to each landowner?**

18 A. The only -- a general description of
19 things like visual impacts were included in the
20 EIS. We did the farm impact study that addressed
21 that question generally rather than specifically
22 to each landowner. So our addressing types of
23 impacts that maybe occur in the magnitude were
24 done rather generally, not specific to each
25 particular parcel, unless there was a specific

1 concern that came up in the comments and we
2 responded to that. And you'd have to look at the
3 comments and responses in the final EIS.

4 **Q. Okay. Did DEQ determine the least amount**
5 **of private injury to each landowner?**

6 **MR. ALKE:** Objection, foundation.

7 A. As I recall, that's a not a finding
8 required under the Major Facility Siting Act and
9 so we probably would not have gone there.

10 **Q. (By Mr. Lund) How would each landowner**
11 **have opportunity to participate in the centerline**
12 **location?**

13 A. Through participation in the process as a
14 whole. And recognize that in our process, as
15 described earlier, we typically approve a
16 centerline and 250 feet on either side of it.
17 That allows the certificate holder and the
18 landowners to make some adjustments within the
19 route we approve.

20 **Q. So it would have been in the public**
21 **MFSA/MEPA process would be their centerline**
22 **location participation for landowners?**

23 A. For some of them, it was. But not
24 necessarily all of them at that stage.

25 **Q. Okay.**

1 A. Again, there were negotiations after we
2 approved the final location that's 300 feet wide.
3 MATL and landowners could work together within
4 that -- what we approved and we would not have to
5 come in for an amendment within that 300 --

6 **Q. As long as they were within the 300 feet?**

7 A. Right.

8 **Q. Was it 300 or 500?**

9 A. Oh, all right. 250 feet on either side
10 of the centerline, general. But there are a few
11 exceptions.

12 **Q. You're messing with me now.**

13 A. I misspoke.

14 **Q. Did the landowners have a right to a**
15 **hearing under the Montana Administrative**
16 **Procedures Act during the location of the**
17 **right-of-way?**

18 **MR. ALKE:** Objection, legal conclusion.

19 A. I'm not a lawyer, so I'm not sure what
20 you're referring to by the Montana Administrative
21 Procedures Act. There was an opportunity for
22 people to appeal the department's decision under
23 the Montana -- under MFSA, I believe.

24 **Q. (By Mr. Lund) Earlier you talked about**
25 **the MFSA process used to be two-phase. Can you**

1 **explain that to me?**

2 A. Yes. Early in my career, once -- there
3 was a two-stage approval for a project. The first
4 stage, they initially determined the need and a
5 route. And a route could be variable with maybe
6 out to a mile and maybe even two miles wide. So
7 they'd have that. And then the certificate of
8 that holder would know where to concentrate their
9 efforts and come up with a variety of alternative
10 centerlines within whatever that variable route
11 was. And then each of those would be weighed in
12 more detail.

13 So if there was an alternative 50 miles
14 away that was no longer in the running after the
15 route approval, applicants would not have to
16 expend great deals of money developing detailed
17 information on something that no longer would
18 exist.

19 **Q. Did the landowners have a right to a**
20 **hearing on the centerline in the old process?**

21 **MR. ALKE:** Objection, legal conclusion.

22 A. I think you could find an answer to that
23 in the old statutes. As I recall they did, but
24 you can look that up, I'm sure, as easily as I
25 could.

1 **Q. (By Ms. Lund) Did you ever participate**
2 **in any of those proceedings at the time when you**
3 **were working at the time that that was part of the**
4 **statute?**

5 A. On the Clyde Park/Dillon project, there
6 are varied centerlines, some of which I had lived
7 and gone to school in Bozeman. I knew some of the
8 landowners involved very well. So I asked not to
9 be assigned to that project to avoid any
10 appearance of a conflict of interest. I think
11 subsequently there was a change in the law, and I
12 can't remember if we did centerlines on
13 Laurel/Bridger B line or Judith Gap to Glengarry,
14 that would take some additional research.

15 **Q. I think it was changed in 1995. Does**
16 **that sound about right to you? You don't**
17 **remember?**

18 A. I wasn't directly involved with the
19 legislature at that time as far as I can recall.

20 **Q. With the MATL project, did DEQ consult**
21 **with all affected landowners regarding the**
22 **centerline location?**

23 **MR. ALKE:** Objection, foundation.

24 A. Again, I think I've answered this
25 previously. We approved a centerline, plus or

1 minus 250 feet on either side of that. And then
2 left it to MATL to negotiate with the landowners
3 and give them a little bit of flexibility for pole
4 placement within that.

5 **Q. (By Mr. Lund) So DEQ did not consult**
6 **with each landowner about the centerline location?**

7 A. We only have an approval of a project --
8 a facility location.

9 **Q. Okay.**

10 A. And generally by rule, it's plus or minus
11 that distance, which I mentioned 250 feet on
12 either side of the centerline. And they can
13 locate the actual centerline anywhere in that when
14 they find a solution that works.

15 **Q. Okay. I think previous to the change in**
16 **1995, the DEQ would submit a centerline report to**
17 **the board. Do you recall that?**

18 A. I do. It was the Board of Natural
19 Resources and Conservation at the time.

20 **Q. Did DEQ submit a centerline report in**
21 **MATL's application or certification?**

22 A. The two-stage process was no longer in
23 play at the time MATL applied.

24 **Q. Okay. Did DEQ determine whether MATL's**
25 **public interest required condemnation of any of**

1 **the landowners' property?**

2 **MR. ALKE:** Objection, foundation. Legal
3 conclusion.

4 A. I think I would refer you to the rules
5 that we discussed earlier pertaining to the public
6 interest, convenience and necessity finding. And
7 our finding beginning on item -- on page 11, item
8 11 in the Certificate of Compliance.

9 **Q. (By Mr. Lund) Would it be fair to say it**
10 **doesn't look like it's in there?**

11 **MR. ALKE:** Objection, foundation,
12 mischaracterization and foundation.

13 A. I would have to read through that again.
14 But in my brief read-through a few minutes ago, I
15 did not see any such thing.

16 **Q. (By Ms. Lund) Okay. Did DEQ determine**
17 **whether MATL's taking of property would be the**
18 **least amount of damage for the greatest good?**

19 **MR. ALKE:** Objection, foundation. Legal
20 conclusion.

21 A. That was not -- we tried to confine
22 ourselves to the findings necessary for
23 certification and that's not one of those findings
24 necessary for certification.

25 **Q. (By Mr. Lund) Okay. Did DEQ determine**

1 **whether MATL would be obligated to supply**
2 **electrical energy at reasonable rates without**
3 **discrimination to all persons, firms and companies**
4 **that desire that power?**

5 **MR. ALKE:** Objection, foundation.

6 A. I don't believe that's one of the
7 findings we have to make under the siting act, so
8 I doubt it. There may have been some mention in
9 the EIS regarding FERC requirements. I'm not a
10 FERC specialist.

11 **Q. (By Ms. Lund) Did DEQ determine whether**
12 **MATL -- let me back up.**

13 **Did DEQ determine whether MATL's line**
14 **would meet any increasing power needs in the area?**
15 **And I'm not talking about transmission needs, I'm**
16 **talking about distribution needs to houses and**
17 **homes in the area.**

18 A. That's not one of the findings that we
19 have to make under siting act. We -- I'll refer
20 you to the final EIS for details. I believe the
21 closest we came to such a finding might be an
22 indication that it might allow access to markets
23 with lower costs for power.

24 **Q. Okay. We're going to switch just a**
25 **little bit.**

1 **Did DEQ choose a route that would be the**
2 **least amount of harm to the landowners?**

3 A. DEQ chose the route that met the minimum
4 adverse impact under 75-20-301 that we discussed
5 earlier.

6 **Q. And that was balancing of many interests?**
7 A. Indeed it is.

8 **Q. Okay. Did DEQ choose the route that**
9 **would had the least number of poles?**

10 A. No, we did not. But I say that because
11 we picked a route that was somewhat longer than
12 MATL's original proposal.

13 **Q. Uh-huh.**

14 A. And the farther you go, the more poles
15 generally you need.

16 **Q. Did DEQ chose a route that utilized**
17 **natural barriers and other features not in**
18 **croplands?**

19 A. In part. And I'm not going to tell you
20 we did that everywhere in order to try to meet the
21 minimum impact finding considering the nature and
22 economics of various alternatives.

23 **Q. Okay. Did DEQ choose a route that did**
24 **not diagonally cross farm fields?**

25 **MR. ALKE:** Objection, vague.

1 A. In general, we tried to reduce that, but
2 there are probably a few places where it does
3 diagonally cross a farm field.

4 **Q. (By Mr. Lund) Did DEQ require MATL to**
5 **use single poles?**

6 A. We required MATL to use single poles on
7 croplands and lands enrolled in the CRP program
8 and that requirement was in direct response to
9 public comment to reduce impacts to farming.

10 **Q. Did DEQ choose a route that could use**
11 **existing right-of-ways?**

12 A. In certain places, for example, just
13 south of Dahlmans' property. In this figure, the
14 approved location, the 500-foot wide stretch
15 overlaps a county road.

16 **Q. Okay.**

17 A. So it's conceivable that a centerline
18 location could be found that parallels or uses the
19 public road right-of-way, if there's not already
20 something there. Or in the case of that
21 particular right-of-way further south of what's
22 indicated on Figure -- Exhibit 203, there's a bit
23 of a bend in the road, if you site down it. So
24 that might require some guide structures and that
25 might create more of a farming problem than just

1 being at the edge of a field rather than in the
2 county road right-of-way.

3 **Q. Did DEQ check with each landowner for the**
4 **landowner's preference of the line diagonal or**
5 **parallel to field sections or boundaries?**

6 A. Only in a general way. We put the
7 document out for public comments. Some landowners
8 responded, other landowners we did not hear back
9 from.

10 **Q. Okay. So when DEQ chose a route, did**
11 **they consider a necessary injury or damage to the**
12 **property, or did you mostly consider less economic**
13 **damage?**

14 **MR. ALKE:** Objection, vague, foundation.

15 A. We would have to look at specifics --

16 **Q. (By Mr. Lund) Okay.**

17 A. -- in individual areas.

18 **Q. Did DEQ determine the purpose of MATL?**

19 A. The EIS included a purpose and need
20 section relative to requirements under both the
21 National Environmental Policy Act and the Montana
22 Environmental Policy Act.

23 **Q. Do you remember what the purpose of the**
24 **MATL line is?**

25 A. You'd have to look at the exact wording

1 in the EIS.

2 **Q. Okay. Based on your involvement with**
3 **this project, does the public have any right to**
4 **use MATL's facilities?**

5 **MR. ALKE:** Objection, foundation.

6 A. I'm not an expert in area, but under FERC
7 regulations as long as MATL uses the FERC process
8 and potential shippers use the FERC process, there
9 is a way for the general public to ship power on
10 it if they make the proper arrangements.

11 **Q. (By Ms. Lund) And can afford to pay for**
12 **that transformer?**

13 A. Or if they buy and sell power, whether or
14 not they generate it themselves. I mean, people
15 buy and sell power as a commodity.

16 **Q. Do you guys make that determination or**
17 **are you just speaking from your general knowledge?**

18 A. Restate your question.

19 **Q. Does the public -- did DEQ determine**
20 **whether the public has any right to use MATL's**
21 **facility as part of their --**

22 A. That's not one of the requirements for
23 refining under the Major Facility Siting Act, so I
24 spoke from my general knowledge of what I
25 understand of FERC requirements.

1 **Q. Okay. How did MATL determine the least**
2 **private injury?**

3 **MR. ALKE:** Objection, foundation.

4 A. You'll to have ask MATL.

5 **Q. I should, shouldn't I.**

6 **I think I meant DEQ. But you said you**
7 **didn't decide it, so never mind that question.**

8 **Did DEQ determine whether MATL had the**
9 **foreseeability to complete the project?**

10 **MR. ALKE:** Objection, vague.

11 A. MATL made various representations to us
12 through the process that they had the financing or
13 were working on the financing and eventually
14 obtained what they thought was the financing to
15 complete the project. But we didn't make any
16 specific determinations nor are we required to.

17 **Q. (By Mr. Lund) So DEQ doesn't have a**
18 **requirement to assess the economic viability of**
19 **MATL?**

20 A. That's not in the decision criteria
21 that --

22 **Q. Did DEQ determine whether there was any**
23 **present need to connect homeowners to the line?**

24 **MR. ALKE:** Objection, vague, foundation.

25 A. I don't recall that it ever came up.

1 **Q. (By Mr. Lund) Did DEQ determine whether**
2 **there was any future need to connect homeowners to**
3 **the line?**

4 **MR. ALKE:** Objection, vague, foundation.

5 A. I don't recall that it ever came up.

6 **Q. (By Mr. Lund) Okay.**

7 A. Other than the wind farms. But, you
8 know, if a homeowner would develop a large wind
9 farm and they went through the FERC process and
10 there was available capacity and MATL and the
11 homeowner could arrive at a price, if the
12 homeowner can pay the tariff, I don't see why
13 that's not a possibility if available capacity is
14 there.

15 **Q. Was it one of the criteria for the MFSA**
16 **certificate?**

17 A. Not that I recall, no.

18 **Q. Could you determine which one of the**
19 **alternatives best serve the public good?**

20 A. Not specifically. Our finding was public
21 interest, convenience and necessity finding there.
22 And we went through that rule with you previously.

23 **Q. And I think I'm talking -- I'll ask the**
24 **next one and then we might go back to that one.**
25 **Which of the alternatives had the least amount of**

1 **private damage, and I'm talking about the**
2 **different routes.**

3 A. I don't recall. You'd have to look that
4 up in the EIS.

5 **Q. Okay. Do you recall how DEQ determined**
6 **the least amount of private damage?**

7 A. We looked at impacts, not specifically
8 the least amount of damage. In terms of impact,
9 the documentation is generally in the EIS.
10 There's some -- maybe some more documentation or
11 files on what the factors were in the decision.

12 **Q. So was it DEQ's job to determine whether**
13 **MATL let the condemnation criteria?**

14 A. That is not our job.

15 **Q. Did you use the condemnation --**

16 A. I would -- let me back up and maybe
17 clarify that.

18 There is a comment and response, or a
19 rather lengthy response regarding the eminent
20 domain process and comments and responses either
21 in the final EIS or the draft EIS, and I would
22 refer you to that response. So we did address the
23 issue, but it's not necessary for our
24 certification findings.

25 **Q. Okay. Did you use the condemnation**

1 **statue or any of the criteria in it to determine**
2 **whether MATL complied with MFSA?**

3 **MR. ALKE:** Objection, legal conclusion.

4 A. Occasionally over the years, I've read
5 the condemnation statute. I find it very
6 convoluted. From my perspective, I don't believe
7 that that is the same. We have to make the
8 findings under 75-20-301. And those findings are
9 not necessarily the same.

10 **Q. (By Ms. Lund) Fair enough.**

11 **Let's talk about Bruce Maurer's property**
12 **and then we're almost done, or I'm almost done.**

13 A. Okay. Do you have a map so I can refresh
14 my memory on where Bruce's place is.

15 **Q. I brought the one from the MFSA case.**
16 **But I also have a draft EA, which I think there's**
17 **one on the back and they've got the color ones.**

18 A. Just to make sure we're talking about the
19 same place.

20 **Q. And we'll make this one 204.**

21 **EXHIBITS:**

22 (Deposition Exhibit No. 204 marked for
23 identification.)

24 **MS. LUND:** You haven't got to go through
25 all this one yet (talking to Ben Alke).

1 **Q. (By Mr. Lund) I think the last page is**
2 **the map.**

3 A. Okay.

4 **Q. Did you know that MATL had an option**
5 **purchase from Bruce Maurer to build the line prior**
6 **to the MFSA process?**

7 A. I wasn't involved in those negotiations.
8 I've heard -- it would be hearsay.

9 **Q. Okay. Prior to the final decision that**
10 **DEQ made on the MFSA certificate, did anyone from**
11 **DEQ ever set foot on Bruce's property to your**
12 **knowledge?**

13 A. Prior to the MFSA certificate. I doubt
14 that we would have trespassed, so I'm going to say
15 no.

16 **Q. Okay.**

17 A. There's a county road near his place and
18 I seem to recall driving on that county road.

19 **Q. And what I'm really looking for is, to**
20 **your recollection, did anybody meet with Bruce**
21 **prior to the certificate being issued or the final**
22 **decision? Not the certificate being issued, the**
23 **final decision.**

24 A. You know Bruce may have showed up at one
25 of the meetings and there were a lot of people at